IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5808 of 1999

1.Sidharth Model Sports Pvt.Ltd.)
a Company incorporated under)
the provisions of the Companies)
Act, 1956 having its registered)
office at Blcok No.A-231,)
Ulhasnagar, District Thane,)
421 004, Maharashtra)..Petitioners
2.Prof.Shivajirao Katale,)
Sharehodler, Promtoer and)
Managing Director of the)
Petitioner No.1 having his)
office at Block A-231,Ulhasnagar)
Dist. Thane-431 004, Maharashtra)

Versus

1.Union of India, Ministry of)
Communications, New Delhi,)
through Law and Judiciary)
Department, Aayakar Bhavan,)
Bombay-20.)
2.The Engineer, Regional)
Monitoring Head, Inspection)
UnitMonitoring Station, Gorai)
Road, Borivli (W),Mumbai-400 092)..RESPONDENTS

Mr.H.D. Buch i/b. Nayana D. Buch, for the
Petitioners
Mr. D.A. Dubey i/b. K.B. Rao, for Union of India

CORAM: F.I. REBELLO & S.P.KUKDAY, JJ.
DATE : 4th March, 2005
ORAL JUDGMENT (PER F.I. REBELLO, J.)

1. The petitioner had applied for dealers possession licence to Respondent No.2, under the provisions of the Indian Wireless and Telegraphy

Act, 1933. It is the case of the petitioner No.2 that apart from being an educationalist, he is a keen enthusiast of Aero Model Sports, which includes flying of model aircraft, helicopters and operation of model boats, ships, yatches, cars, trucks, trains, etc. The said models include remote control models and are designed and built as operational miniature models. The petitioner No.2 is one of the only seven Indian members of the International Radio Control Helicopters Association since several years. Petitioner No.1 has participated in Aero Model Sports Competitions and Demonstrations in several countries all over the world and has also held demonstrations at various functions in India and his efforts have been widely acclaimed and appreciated. It is set out that the said hobby is not merely for entertainment or passing time but is in the nature of a highly creative and hi-tech art of a scientific kind. The company has paid many visits to such foreign countries like USA, Canada, Australia and also countries of Asia and have participated in many such international competitions and are desirous of introducing the same in India on a large scale.

The petitioner No.2 has formed a flying club (model) with water sports facilities wherein other directors are imparting training to all desirous of learning. They also conducted hundreds of public/educational shows at various public institutions.

2. Considering their work in the field and experience and the efforts taken by them, they realised the need for regular supply of miniature engines, remote control systems and ancillary items from manufacturers located abroad through legal and authentic channels. The petitioner No.2 along with others floated the Company, petitioner No.1 which is duly incorporated under the provisions of Indian Companies Act. At the time when the petition was filed, it is stated that, they had imported merchandise excluding remote control systems worth approximately Rs.50 lacs and paid official duty thereon and they are desirous of importing remote control systems legally. They have applied for what is known as "Dealers Possession Licence". The Application was made by the petitioner company to the Respondent No.2 by application dated 12th

April, 1999. They have registered themselves as Small Scale Industry with the Government of India, Directorate of Industries. They have also secured certificate of importer and exporter Code (IEC) Number from the Ministry of Commerce, office of the Joint director General of Foreign Trade, Government of India.

3. The petitioners contend that they were shocked and surprised to receive on 25th August, 1999 a handwritten communication dated 6th August, 1999 addressed by Respondent No.2 that the petitioners application for licence could not be accepted because of alleged adverse police verification report. It is the contention of the petitioners that the said action is violative of Article 14, 19(1)(g) and 21 of the Constitution of India. The action, it is submitted, also violated principles of natural justice and fair play and amounts to rejecting the petitioners' application without any cogent reasons and without furnishing any particulars of the alleged material used against the petitioners. It is, therefore, submitted that the letter dated 12th April, 1999

rejecting the petitioners application ought to be quashed and set aside and a direction be issued to the respondents to issue to the petitioners Dealers Possession Licence as applied by them by their application dated 12th April, 1999.

4. When the matter came up for admission and interim relief as the same was opposed by the respondents it appears that this Court called for the records. To meet the contentions as raised by the Respondents additional affidavit was filed by the petitioner No.2 on 16th November, 1999. In that affidavit it is set out that as on the date of the reply no cases were pending either against the petitioner or his son after 26th April, 1999. The petitioner also explained the circumstances under which the cases had been filed and subsequent judgment by the Court and also directed to return to the petitioner No.2 his weapon and to renew his licence.

5. On behalf of the Respondent No.2 a reply came to be filed on 15th December, 1999. The only reason given for rejecting the application is as

set out in para.10 of the affidavit, which is that the report received from the police was not favourable. Copy of the report is not annexed with the reply.

6. Under the Indian Wireless & Telegraphy Act, thereinafter referred to as the Act, the Authority competent to issue the licence to possess wireless telegraphy apparatus is the Authority constituted under the Indian Telegraphy Act, 1885. The licence can be issued in such manner and on such conditions and subject to such payments as may be prescribed.

7. The petitioners by their application had applied for the license. The same was rejected by Respondent No.2 by his letter dated 6th August, 1999. The only reason given is that the Police Verification Report was adverse. The petitioner No.2 has filed an affidavit in which he has set out that there were no cases pending against him after 20th April, 1999. These facts are placed on record by rejoinder and have not been controverted by the Respondents. In other words the only reason given for rejecting the application no longer survives.

It is no doubt true that the petitioners have contended that order is in violation of the principles of natural justice and fair play. To our mind if the order involves civil consequences it would be possible to accept such a contention considering that this is a matter of issuing license. In considering the application the Authority issuing the license must consider, whether the requirements of the Act are complied with. If the Applicant complied with the requirements, the licence ordinarily ought to have been given. If the applicant did not meet with the requirement then the same can be rejected. However, the person authorised to issue the licence cannot base his rejection either on irrelevant facts or on material which was not available or material received from other sources and not disclosed to the Petitioners.

. In the instant case the only contention was that there were cases filed against the petitioner. There is nothing in the Act which sets out, that merely because proceedings are pending and are being filed or even if the petitioner is convicted

of an offence then such petitioner is debarred from getting the license. To debar a person from getting a licence there must be provision in the Act or the Rules framed. In the instant case nothing has been pointed out to say that there is any provision in the Act by which the petitioner is not entitled to get the license. Counsel for the parties were also not in a position to inform the Court whether any Rules have been framed. We proceed on the footing that there are no Rules.

7. For the grant of license, the Licensing Authority will have to examine the provisions of the laws in force and if there is no bar merely because a criminal offence is pending, could be no ground for refusing a license. It may be remembered that what the petitioners are seeking is a license to sell the goods which are in the nature of unmanned vehicles (UMV) which have been imported under an import license. The licensing Authority could not have rejected the application for license on a ground not available and merely based on a police report. Even otherwise if there was any adverse material to be used against the petitioners

and in the possession of the respondent No.2 as Licensing Authority, that had to be made available to the Petitioners as rejection of a license involves civil consequences. In the instant case not only was there non-compliance with this basic principle of making available the adverse material adverse to the petitioners, but is as now known, the rejection was based on non-existing material.

8. Pursuant to the interim order granted the Respondent No.2 has been issuing annual licenses to the petitioners. As we find that apart from the reason given there are no other reasons subsisting and the reason given for rejecting the license was also devoid of any merit, the respondent No.2 is directed to consider the petitioners application and grant them license on the expiry of the earlier license. In the present case the Court is informed that the application for licence has been applied for the current year 2005 which is pending with the respondent No.2. We direct the Respondent No.2 considering that earlier licence had been granted pursuant to interim orders of this Corut and as there are no other reasons not to grant the licence

to issue the licence within a period of eight weeks from today. Rule made absolute accordingly. No order as to costs.

. P.S. of this Court to issue authenticated copy of this order to the parties.

(F.I. REBELLO, J.)

(S.P. KUKDAY, J.)